

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA, -Docket No. 4:21-cr-52-FL-1
-
Plaintiff, - New Bern, North Carolina
- December 8, 2022
v. - Sentencing
-
DWAYNE DANTEL THOMAS, -
-
Defendant. -

PUBLIC TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE LOUISE WOOD FLANAGAN
UNITED STATES DISTRICT JUDGE.

**(PURSUANT TO STANDING ORDER 22-SO-1,
PORTIONS OF ALL CHANGE OF PLEA AND SENTENCING
TRANSCRIPTS ARE RESTRICTED)**

APPEARANCES:

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1 (Commenced at 10:42 a.m.)

2 THE COURT: All right. Well, let's look
3 forward now to your case, Mr. Greene, of Dwayne Thomas.

4 Good morning, Mr. Thomas. My name is Judge
5 Flanagan. This is the time the Court set aside to
6 sentence you for conspiring to distribute fentanyl, and
7 possessing methamphetamine, cocaine, fentanyl, and heroin
8 and a firearm in furtherance of drug trafficking. A
9 crime that -- have you read the presentence report?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Good. And you had enough time
12 to talk with Mr. Greene to be ready to be sentenced
13 today?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. I'm familiar with
16 the offense conduct. Criminal history is somewhat
17 lengthy but you're only in criminal history category II.
18 And it's brought to my attention that the presentence
19 report is perhaps the basis for the Court thinking about
20 an upward departure but I got a thoughtful memo from
21 Mr. Greene. And he's arguing, among other things, due to
22 your health history a low end of the guideline sentence.

23 The guideline sentence is recommended to me
24 somewhere between 78 to 97 months on Counts One and Four.
25 And I don't have a choice other than to sentence you to

1 at least five years consecutive on the gun charge. You
2 face up to 20 years in prison on Count Four and 40 years
3 on Count One.

4 What does the Government think is a
5 sentence that's sufficient but not more than what it
6 needs to be?

7 You can be seated.

8 MR. RHOADES: Thank you, Your Honor.
9 Recognizing all the factors that the Court needs to
10 consider, we'd recommend a sentence from the top end of
11 the guidelines in this case. You know, there are several
12 components to this case that were very troubling to the
13 Government. And I think the Court would agree.

14 And this deals with an individual who is
15 dealing very dangerous drugs that have taken the lives of
16 many people. And held accountable for quite a large
17 quantity of illicit drugs in this case. Knowing that,
18 Your Honor, it's criminally dangerous when someone is
19 engaged in this type of behavior to possess firearms.

20 As this Court knows what those firearms do
21 for cases like this. It's not just about possessing a
22 firearm but possessing that firearm for protection. And
23 oftentimes that leaves them and their families vulnerable
24 because people know they're soft targets because they're
25 drug dealers. It's the combination of this and this

1 conduct is extremely troubling.

2 Looking at his history and characteristics,
3 you know, he doesn't have a significant criminal history
4 that's scored. But I think what we see here is conduct
5 that is truly escalating. Because his criminal history
6 starts at age 16 and continues until the incident
7 offense. Your Honor, I think what's also noteworthy is
8 when we're looking at people who come into this court, we
9 see people typically on the younger end, they're, you
10 know, in their 20s and sometimes in their 30s.

11 But this criminal conduct is occurring in
12 late 30s and early 40s. And I think that's a sign that
13 -- of an individual who should know better. He's had the
14 opportunity to engage in work. He has done some in the
15 past but he's chosen a life that's much different than
16 what he's capable of living in normal society. So again,
17 all these factors that we've given, the danger that he is
18 in the community, I think a sentence from the top end of
19 the guidelines would be appropriate in this case.

20 THE COURT: Can you remind me how he may
21 have used his minor children in his drug operations?

22 MR. RHOADES: Your Honor, that -- from what
23 I understand is, you know, when we're considering a plea
24 and considering stipulations we have to consider where
25 the source is coming from and if we can corroborate it.

1 A lot of the information contained in the investigative
2 material, such as, you know, his wife being a part of the
3 organization, that he had distributed drugs, was
4 corroborated by independent surveillance or some other
5 means. Here we had a statement made by a confidential
6 informant that -- that they may have been used at some
7 point but there was no corroboration behind that.

8 THE COURT: Okay. All right.

9 MR. RHOADES: Thank you, Your Honor.

10 THE COURT: Thank you. Mr. Greene.

11 MR. GREENE: Thank you, Judge Flanagan.

12 Judge, we have this sentencing memorandum and we are in
13 this case asking and we think appropriate based on the
14 facts in this case the low end of the guidelines. Judge,
15 responding to the Government's position about what the
16 appropriate sentence would be I'd ask the Court to
17 consider these things.

18 Number One, is I certainly, and we all
19 agree that the type of drugs -- all drugs but in
20 particular these drugs are very dangerous to society.
21 But that has been taken into consideration in the
22 guidelines. Also the criminal history, that has been
23 taken into the guideline calculation of his criminal
24 history.

25 And I would, Judge, in looking at the

1 charges, his history, I recognize that in 2017 it was a
2 felony drug charge that ultimately was dismissed pursuant
3 to a 9096. And then the next drug charge of significance
4 was when he was 20 years old. And that charge ultimately
5 was dismissed as well. So does he have a prior history
6 of drugs in the criminal system? Yes. However, what the
7 record indicates is that when he was 20, which was many
8 years ago, and then, yes, more recently at 37. Based on
9 the State law those cases were ultimately dismissed, both
10 of them.

11 And, again, I'm not trying to minimize it.
12 But, Judge, I'm asking the Court to consider the things
13 set forth in our sentencing memorandum and also these
14 things. His health. He's diabetic. Has some other
15 significant health concerns that I would ask the Court to
16 consider in mitigation or to consider in order for the
17 Court to consider the low end of the guideline range.

18 THE COURT: Did you want to make an oral
19 motion to seal your sentencing memorandum?

20 MR. GREENE: I would ask that, Judge. And
21 I want to tell the Court this. My client asked when we
22 talked about this to seal the courtroom. But I am just
23 referring to the -- I told him that I was going to just
24 refer specifically to health issues and ask the Court to
25 review what we have on filed. And yes. I would ask that

1 it be placed under seal.

2 THE COURT: Because I noticed it wasn't.
3 All right. The oral motion, Madam Clerk, is allowed and
4 the Docket Entry Number 44 now will be sealed.

5 MR. GREENE: Thank you, Your Honor. So in
6 things in consideration is his health, which we're also
7 going to ask the Court to recommend another facility
8 where he can get the treatment that he needs for those
9 health --

10 THE COURT: I'm not sure he really needs to
11 go to a medical facility but --

12 MR. GREENE: But some type of consideration
13 of the Court whether it's Butner or just in the judgment
14 that --

15 THE COURT: Okay.

16 MR. GREENE: -- this needs to be addressed.
17 Judge, also is that he has, you know, he comes to you
18 with -- got kicked out in the tenth grade. He desires
19 GED. He would like, as he's indicated to probation, he's
20 indicated to us, he'd like to further his education while
21 he's in custody.

22 He comes to you as he sits here today with
23 seven biological children. And prior to his arrest he
24 was financially supporting them and was part of their
25 life. He also comes to you today, Judge, with family in

1 the courtroom. His mother and his stepfather and a child
2 are here. His family has been very supportive of him.

3 Judge, and also I don't know if this plays
4 any role in how the Court looks at this case but this --
5 sometimes it's always good in these situations in this
6 court to get a second opinion. And this case was set for
7 trial. And then he asked for a second opinion. We got
8 involved in the case and now we've been able to avoid a
9 trial. And that's good for him and it's good for -- it
10 just shows the Court his willingness to accept
11 responsibility. And he will -- he acknowledges that,
12 Judge.

13 That this is -- I mean, the Court makes
14 reference to possibly his children being involved. He
15 adamantly denies that with respect to the comments of the
16 Government as far as the truth of that. But that is --
17 certainly when we got this case that was a concern. That
18 we read on paper but I think that the facts and
19 circumstances of that don't suggest that's, in fact, what
20 happened. But I certainly understand the Court's concern
21 about that.

22 Judge, we think that a sufficient sentence
23 would, in fact, be in the low end of the guideline range
24 based on all of the circumstances set forth in this. My
25 client has a -- well, he's had a drug problem. He

1 indicates that his drug addiction consists of, as set
2 forth in the presentencing report, heroin and pills.
3 He's obviously used other drugs but indicated to
4 probation that he's not addicted to those things but has
5 used them. But he was honest in his report to probation
6 and this report.

7 Judge, a low-end sentence is appropriate.
8 He's asking the Court to consider -- well, he's asking
9 the Court to allow him vocational training. And also
10 based on his depression set forth in our memo,
11 psychological services and treatment so that he can deal
12 with those while he's in prison. And also, I know I
13 already mentioned it but education. Those are the things
14 that he would like. And he would like to be close to his
15 family if it's possible.

16 Judge, he's been very concerned about his
17 case obviously but he's been easy to work with. We work
18 together well. He's very polite. And so we would ask
19 the Court based on the factors for a low-end sentence.

20 THE COURT: Okay. Thank you. Would your
21 client like to say anything?

22 THE DEFENDANT: I understand. I just want
23 to say I accept responsibility and everything. But as
24 far as about having the kids selling drugs, that ain't
25 true.

1 THE COURT: Okay. Well, you are a long-
2 time drug dealer and there's a need to protect the
3 public. This is such dangerous activity. It kills
4 people. It tears apart families. It frays the edges of
5 communities. And when you add a weapon into this drug
6 dealing activity, the opportunities to commit even more
7 harm rise so quickly. There's a need to promote respect
8 for the law in addition to discouraging misconduct. And
9 there's a need for treatment.

10 I don't see any need to go outside the
11 guideline range but I think this range is appropriate for
12 the Court to look into and to find a sentence. And I
13 don't think I need to go to the top of the range as the
14 Government argues but I don't believe the very bottom is
15 appropriate either. I think a total sentence of 144
16 months, that's 12 years. I think that's appropriate.

17 That'll be five years consecutive on Count
18 Five and 84 months on Counts One and Four to run
19 together. Creating a total term of incarceration of 144
20 months. You'll be supervised for five years on Count One
21 and Five and three years on Count Four. I'll run all of
22 that together. Before I address your conditions of
23 supervision let me take a step back.

24 Recommend you to Butner. I will put in the
25 judgment somewhere with note regarding defendant's

1 concerning medical issues and that should be fine,
2 Mr. Greene, don't you think?

3 MR. GREENE: I agree.

4 THE COURT: Okay. So that'll be somewhere
5 on the judgment. And then I'm going to add mental health
6 treatment. I understand there's some depression. I can
7 appreciate that there are mental health issues and so I'm
8 going to recommend the Bureau undertake a comprehensive
9 mental health assessment of you and any mental health
10 treatment that can be provided.

11 I'm going to add a couple of other
12 recommendations. I'm going to recommend you for the most
13 intensive treatment program for addiction. And I'd like
14 to see you get your GED. You haven't done that yet, have
15 you?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Any reason why you can't?

18 THE DEFENDANT: No. I want to get it.

19 THE COURT: Okay. Let me recommend further
20 education and vocational training. I'd like to see you
21 get it too. And I understand if you can get it in the
22 prison system it will provide you with some additional
23 opportunities for employment in the prison system and for
24 getting more education. All right.

25 Now let's get back to supervised release.

1 I talked about the number of years. Let me now break it
2 down into three different categories. First and
3 foremost, I want you to be a drug dealer that understands
4 when I say this. Because there are drug dealers out
5 there that I've sentenced two or three times. They don't
6 seem to get it.

7 You can't possess any drugs. And you can't
8 possess a weapon. And you can't break any law. If you
9 do, that will be a violation of supervised release in
10 addition to whatever law or laws were at issue. And what
11 that would mean in this case is you'd go back to prison
12 in this case in addition to whatever punishment you would
13 face. Any questions about that?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: So I see drug dealers, as I've
16 said, either I or my colleagues have sentenced them
17 before and there's some that come into this courtroom for
18 their third federal drug sentence. There's going to be
19 pressure on you when you get out of prison.

20 People are used to, I have a strong
21 feeling, you buying them things with money that you've
22 gained from selling drugs. And you surely have bought
23 yourself things with drug money. And let you know now,
24 as I hope you know, and let those that may ask you for
25 things know, there's nothing that you buy with drug money

1 that's worth anybody having.

2 So you're no good to anybody when you get
3 out of prison unless you're good to yourself. And that
4 means not being around drug dealers, changing your
5 friends, changing where you go. And not thinking that
6 you're a failure because you can't buy somebody something
7 except with money you earn lawfully. And that's when
8 it's worth having.

9 All right. There's some standard
10 conditions in this district. So I'm moving now to the
11 second category. And May of last year we formalized our
12 standard conditions and these are things that I tell
13 defendants you should be doing anyway. I've already
14 mentioned one. Don't be around people breaking the law.
15 Don't lie to your probation officer.

16 Work full-time if you can. I know you're
17 on disability so, you know, that probably we're not going
18 to make you work full-time if you're disabled. But don't
19 wake up in the middle of the night and move someplace
20 without us, through the probation office, approving in
21 advance where you're going. These are things you should
22 be doing anyway.

23 And then finally there's some special
24 conditions for you. First and foremost, drug testing and
25 treatment. Let's keep up with mental health treatment.

1 If you want more education and vocational training,
2 that's a great thing. I want you to have it. As for a
3 special condition, the fourth is you're going to
4 cooperate with collection of DNA. I'm not sure how
5 special that really is because everybody's got to do it
6 in your situation.

7 But you will consent, because of your
8 background and history and the need to effectively
9 supervise you, to warrantless searches of your person,
10 your car, your home. So warrantless searches by
11 probation or by law enforcement but only if there's a
12 reasonable cause or reasonable suspicion to think that
13 you're not doing what you're supposed to be doing. That
14 you're breaking the law or violating supervised release.
15 So if you are doing what you're supposed to be doing
16 there's not going to be any problem.

17 And sometimes the probation office has to
18 supervise in the regular course -- well, they always have
19 to supervise but sometimes they have to search you in the
20 regular course of their lawful duties. You'll agree to
21 that without a warrant. Nobody's trying to harass.
22 Really it's a chance for you to show you're doing what
23 you're supposed to be doing. And we all want to
24 celebrate that.

25 And at the end of the day, it's up to you

1 and the decisions you make. Let me tell you, your
2 probation officer's going to be a lot of help to you. So
3 go into that relationship with that perspective. They
4 really do want to see you succeed.

5 There's a \$300 special assessment. There's
6 no fine because I don't think you could pay a fine.
7 You've got these dependents. You probably don't need any
8 more than what you've got already. Because you've got a
9 lot to take care of, don't you?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. Well, support them
12 lawfully. All right. I'm not going to deny you federal
13 benefits. I'm going to dismiss the other Counts against
14 you. I'm going to sign this order for forfeiture. But
15 before I make all this final, anything from the
16 Government's perspective?

17 MR. RHOADES: No, Your Honor. Thank you.

18 THE COURT: Okay. Mr. Cantafio, you have
19 any changes recommended by your office to comply with
20 relevant sentencing law?

21 THE PROBATION OFFICER: Nothing further,
22 Your Honor.

23 THE COURT: Thank you very much. All
24 right. Mr. Greene, is there anything that you would ask
25 me to consider before I tell your client how to make an

1 appeal?

2 MR. GREENE: No, Your Honor.

3 THE COURT: All right. Mr. Thomas, you can
4 appeal. You did enter into a plea agreement that had
5 waivers in there of rights to appeal. I know you know
6 that. And these waivers are generally enforceable but if
7 you think they are not, you can present your theory to
8 the Court above.

9 Move quickly because you've only got 14
10 days from the date that the judgment goes on the docket
11 to do that. If you can't afford the cost of an appeal,
12 you can apply for permission to appeal for free. And if
13 you request, the clerk will fill out the appeal paperwork
14 for you. You will get credit for time served. And in
15 the federal system your good behavior in custody can take
16 almost two months a year off the sentence.

17 Does your client have any questions about
18 his appeal rights?

19 MR. GREENE: No, Your Honor.

20 THE COURT: All right. Thank you very
21 much.

22 MR. GREENE: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 (Concluded at 10:03 a.m.)

25 - - -

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

/s/ Kendyl Trent2/21/2023

Kendyl Trent, CVR-CM

Date